

REMARKS

Claims 68-70, 73, 75-88 and 90 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over EP 1075848 A2 to Robertson in view of United States Patent No. 6,012,455 to Goldstein. Claims 71 and 89 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Robertson in view of Goldstein and further in view of EP 0845277 A2 to Daniell et al. Reconsideration and withdrawal of the rejections is requested.

The claims have not been changed in scope. Independent claims 68, 85, 88, 89 and 90 have been amended to clarify the existing understanding of the scope of the claims, i.e. that the nasal cannula is in fluid connection with one of the said outer flap and said elbow connector, and that the gases that are delivered by the nasal cannula are the same gases from the conduit, and to rearrange some elements. Therefore, Applicant submits that the Examiner should enter and consider these amendments.

Independent claims 68, 85, 88, 89 and 90 specify a mouthpiece for the delivery of gases to a user which has an outer flap which is capable of delivering gases to the user's oral passage, a nasal cannula which is capable of delivering gases to the user's nares, and an elbow connector in fluid connection with said outer flap. The nasal cannula is in fluid communication and attached to one of the outer flap and the elbow connector. None of the prior art references show the combination claimed in claims 68, 85, 88, 89 and 90 which allows the gases to be supplied both orally and nasally to the user from the source. Accordingly, Robertson shows a mouthpiece that delivers gases orally, and Goldstein shows a nasal air delivery apparatus that delivers gases nasally.

There is no disclosure or suggestion in Robertson or Goldstein to provide a mouthpiece that is capable of providing gases both orally and nasally to the user. The Examiner relies upon the statement in Robertson at in Paragraph [0002], lines 25-28 that “. . . almost universally adopted based on the well known observation that humans show a decided preference for nasal breathing during sleep” to show that it would be obvious to combine the mouthpiece of Robertson with the nasal delivery apparatus of Goldstein. Applicant submits that this combination can only be done with the use of hindsight after reading the disclosure of Applicant’s invention.

While Robertson discloses that it is known to provide nasal breathing, the entire invention of Robertson is devoted to other supply means for delivering gases to a user which are different than the known nasal supply. Robertson provides this objective in the very next sentence to that cited by the Examiner at Paragraph [0002], lines 28-31 in which Robertson states “For this reason, little development has been undertaken into other possible methods of providing the pressurized airstream to a user.” Therefore, Robertson specifically teaches that the invention disclosed therein is directed to means other than nasal breathing, i.e. oral delivery of gases to the user. As a matter of fact, Robertson discloses structure for its mouthpiece to prevent the user from unconsciously blocking the oral passageway and reverting to nasal breathing, see paragraph [0022] which discloses vertically extending spacers 57. The invention of Robertson clearly teaches away from providing nasal breathing to the user.

Therefore, it would not be obvious to combine Robertson with Goldstein. Robertson clearly intends for his invention to be only directed to oral delivery of gases. It would not have

been obvious to modify Robertson to include nasal breathing. In fact, it would defeat the express purpose of Robertson.

With regard to independent claim 89, the addition of Daniell does not overcome the fact that there is no teaching, disclosure of suggestion for providing the combination of oral and nasal delivery to provide gases to the user from the source.

Reconsideration and withdrawal of the rejection is requested. Allowance of claims 68, 85, 88, 89 and 90 is requested.

Claims 69, 70, 71, 73 and 75-84 are dependent upon claim 68 which Applicant submits is allowable. Claims 86 and 87 are dependent upon claim 85 which Applicant submits is allowable. Therefore, Applicant submits that these claims are allowable. Reconsideration and allowance is requested.

Claims 72-74 were rejected were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Robertson in view of Goldstein and further in view of Daniell et al. and further in view of United States Published Application No. 2003/0196662 to Ging et al. Claims 72-74 are dependent upon claim 68 which Applicant submits is in condition for allowance. Therefore, Applicant submits that claims 72-74 are allowable. Reconsideration and allowance is requested.

Applicant thanks the Examiner for the courtesy of the interviews in April. The substance of the interview provided in the Examiner-Initiated Interview Summary form is correct, Applicant adopts the Examiner's stated summary, and Applicant has nothing further to add to the summary.

Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

Dated: June 19, 2009

By: Raiford A. Blackstone, Jr.
Raiford A. Blackstone, Jr., Reg. No. 25,156
Linda L. Palomar, Reg. No. 37,903

TREXLER, BUSHNELL, GIANGIORGI,
BLACKSTONE and MARR, LTD.
105 W. Adams Street, 36th Floor
Chicago, Illinois 60603

AD8397.WPD